IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 5TH NOVEMBER 2007 / 14TH KARTHIKA 1929

MACA.No. 1734 of 2007()

OPMV.3088/2001 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THRISSUR
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APPELLANT/3RD RESPONDENT

UNITED INDIA INSURANCE CO. LTD.,
VADAKKANCHERRY ROAD, KUNNAMKULAM, THRISSUR,
REPRESENTED BY ITS ASSISTANT MANAGER,
REGIONAL OFFICE, ERNAKULAM.

BY ADV. SRI.N.S.MOHAMMED USMAN

RESPONDENTS: PETITIONER & RESPONDENTS
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1. SHAJU, S/O KUNAJAPPAN,
AGED 40 YEARS, VADAKKETHALAKKAL HOUSE,
KULLUPURAM, P.O.KADAVALLUR, THRISSUR.

2. K.V.JACOB, S/O VAREED,
KOOTHOOR HOUSE, AKATHIYOOR P.O.,
THRISSUR.

3. BENNET K.J.,
S/O K.V.JACOB, KOOTHOOR HOUSE,
AKATHIYOOR P.O., THRISSUR.

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 05/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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M.A.C.A. NO. 1734 OF 2007

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Dated this the 5th day of November, 2007

J U D G M E N T

Third respondent-Insurer in O.P(MV) No.3088 of 2001 on the file of the Motor Accidents Claims Tribunal, Thrissur, is the appellant. Insurer has filed the appeal challenging its liability to indemnify the insured.

2. First respondent met with a motor vehicle accident. He filed the O.P. claiming compensation impleading the owner, driver and the appellant. Appellant admitted the existence of the insurance policy, but disputed the negligence alleged and also the quantum of compensation claimed. Tribunal found that the accident occurred due to the negligence of the driver of the offending vehicle, awarded compensation and directed the appellant to pay the compensation awarded. Challenging that finding, this appeal is filed.

3. The main contention raised in the appeal is that the appellant is not liable to indemnify the insured in view of the fact that the injured was a pillion rider on the motor vehicle. According to the appellant the policy issued in this case is an

act only policy and no additional premium was paid. Hence the appellant is not liable to indemnify the insured. Learned counsel for the appellant relied on the principle laid down in United India Insurance Co. Ltd. v. Tilak Singh (2006 (2) KLT 884) in support of his case.

4. There cannot be any dispute regarding the legal proposition raised by the appellant. But the difficulty in this case is that the appellant had no such case before the Tribunal. Merely because by a later decision the Apex Court had clarified the legal position is not a ground to interfere with the finding of fact based on the evidence adduced in this case. The company which failed to raise such a contention and not conducted the case properly cannot now be allowed to take the shelter of a decision which was rendered later. I do not find any reason to interfere with the impugned award. The appeal is without any and the same is only to be dismissed.

In the result, appeal is dismissed.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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M.A.C.A. NO. 1734 OF 2007

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J U D G M E N T

5TH NOVEMBER, 2007